

Bendit Weinstock

A PROFESSIONAL CORPORATION • COUNSELLORS AT LAW

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MAX SPINRAD

September 24, 2009

Clerk, Superior Court of New Jersey
Essex County, Law Division
Essex County Court House
50 West Market Street, Room 113
Newark, New Jersey 07102

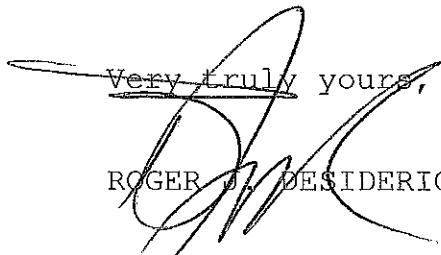
Re: New Jersey DEP, et al. v. Occidental, et al.
Docket No. ESX-L-9868-05 (PASR)
Our File: 41292-D/T
Township of Maplewood adv. Maxus Energy Corporation

Dear Sir or Madam:

Enclosed for filing is the original and one (1) copy of Case Information Statement and Answer to defendants Maxus Energy Corporation's and Tierra Solutions, Inc.'s Third Party Complaint "A" (against public entities), Separate Defenses, Crossclaims and Counterclaims and Jury Demand on behalf of the Township of Maplewood, third-party defendant. Please return a "filed" copy of each document in the enclosed self-addressed stamped envelope.

Also enclosed is our check in the amount of \$65.00, payable to "Treasurer, State of New Jersey", to cover the additional filing fee inasmuch as \$135.00 was previously sent with the Appearance filed on behalf of the Township of Maplewood.

Thank you.


Very truly yours,

ROGER J. DESIDERIO

RJD:11

Enclosures

cc: Posted to Electronic Platform for Service
Hon. Sebastian P. Lombardi, J.S.C. (Hand delivery)
William L. Warren, Esq. (via regular mail)
Thomas E. Starnes, Esq. (via regular mail)

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Attorneys for Third-Party Defendant

Township of Maplewood

Our File No. 41292

New Jersey Department of
Environmental Protection, et al.,

Plaintiffs,

v.

Occidental Chemical Corporation,
et al.,

Defendants,

and

Occidental Chemical Corporation,
et al.,

Third-Party Plaintiffs,

v.

Township of Maplewood, et als.,

Third-Party Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION - ESSEX COUNTY
: DOCKET NO. ESX-L-9868-05

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Civil Action

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: ANSWER OF TOWNSHIP OF MAPLEWOOD
: TO DEFENDANTS MAXUS ENERGY
: CORPORATION'S AND TIERRA
: SOLUTIONS, INC.'S THIRD PARTY
: COMPLAINT "A" (Against Public
: Entities), SEPARATE DEFENSES,
: CROSSCLAIMS AND COUNTERCLAIMS
: AND JURY DEMAND

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Third-Party Defendant, Township of Maplewood, with its
principal address at 574 Valley Street, Maplewood, New Jersey, by

way of Answer to the Third Party Complaint "A" (Against Public Entities) brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., says:

ANSWER

1. Other than to admit that the Township of Maplewood is a public body and municipality of the State of New Jersey, with its principal place of business at 574 Valley Street, Maplewood, New Jersey and that the Township of Maplewood is a member of the Joint Meeting of Essex and Union Counties, all other allegations against the Township of Maplewood are denied.

WHEREFORE, Third Party Defendant, Township of Maplewood, demands judgment as follows:

1. Dismissing Third Party Plaintiffs' Complaint;
2. Awarding attorneys' fees and costs of suit; and
3. For such other relief as the Court may deem just and equitable.

FIRST SEPARATE DEFENSE

The Third party Complaint "A" fails to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

The Third Party Plaintiffs lack standing to maintain the causes of action set forth in Third Party Complaint "A."

THIRD SEPARATE DEFENSE

Any wrongful conduct alleged in the Third Party Complaint "A"

resulted from and was proximately caused by the conduct of persons other than the Township of Maplewood or by the conduct of persons over whom the Township of Maplewood had no control, or by the superseding intervention, criminal, illegal or tortuous acts of others outside the control of the Township of Maplewood.

FOURTH SEPARATE DEFENSE

Without admitting any liability, if it is determined that the Township of Maplewood engaged in any of the activities alleged in the Third Party Complaint "A", such activities were *de minimis*.

FIFTH SEPARATE DEFENSE

The claims asserted in the Third Party Complaint "A" are barred, in whole or in part, by the applicable statutes of limitations.

SIXTH SEPARATE DEFENSE

Plaintiffs' and Defendants/Third Party Plaintiffs' costs incurred or to be incurred at the site are unreasonable, duplicative, not cost effective, and not consistent with the National Contingency Plan.

SEVENTH SEPARATE DEFENSE

To the extent that the Township of Maplewood is found liable in this matter, joint and several liability is inappropriate because there are distinct harms or a reasonable basis for apportionment of the harm suffered.

EIGHTH SEPARATE DEFENSE

At all times relevant, the Township of Maplewood complied with all applicable laws, regulations or standards and government approvals.

NINTH SEPARATE DEFENSE

Plaintiffs and Defendants/Third Party Plaintiffs failed to provide notice to the Township of Maplewood that it was considered a potentially responsible party. This has resulted in a deprivation of the Township of Maplewood's substantive and procedural due process rights under the Federal Constitution.

TENTH SEPARATE DEFENSE

Plaintiffs' and Defendants/Third Party Plaintiffs' Complaints include claims for costs not yet expended. The Spill Act does not authorize Plaintiffs and/or Defendants/Third Party Plaintiffs to recover future costs. Therefore, Plaintiffs and Defendants/Third Party Plaintiffs' claims are premature and not yet ripe for adjudication.

ELEVENTH SEPARATE DEFENSE

The Third Party Complaint "A" represents an unauthorized and unconstitutional retroactive application of the Spill Act and other applicable case law.

TWELFTH SEPARATE DEFENSE

The Township of Maplewood has at all times acted in good faith.

THIRTEENTH SEPARATE DEFENSE

The Township of Maplewood hereby asserts and adopts all other defenses which have been or will be asserted at any time by any other party in this action, to the extent said defenses are applicable to the Township of Maplewood.

FOURTEENTH SEPARATE DEFENSE

To the extent that this action is brought pursuant to the Spill Act, the Township of Maplewood is not liable because any release or threat of release of any hazardous substance was an omission of a third party other than an employee or agent of the Township of Maplewood. The Township of Maplewood exercised due care with respect to any such alleged hazardous substance, in light of all relevant facts and circumstances. The Township of Maplewood took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeable result from such acts or omissions. Consequently, the Township of Maplewood is not liable under the Spill Act.

FIFTEENTH SEPARATE DEFENSE

Plaintiffs' and Defendants/Third Party Plaintiffs' claims for relief are barred by waiver, estoppels and/or latches.

SIXTEENTH SEPARATE DEFENSE

In the event Plaintiffs' and/or Defendants/Third Party Plaintiffs' claims are not barred by their own conduct, then any recovery by these parties should be reduced in the proportion that

such parties' acts or omissions bear to the acts or omissions that cause the alleged injuries or damages.

SEVENTEENTH SEPARATE DEFENSE

Plaintiffs and Defendants/Third Party Plaintiffs have failed to comply with the necessary conditions precedent for the maintenance of a claim under the Spill Act.

EIGHTEENTH SEPARATE DEFENSE

The Township of Maplewood is not a "responsible party" under the Spill act.

NINETEENTH SEPARATE DEFENSE

Certain of the costs incurred or to be incurred by the Plaintiffs and/or Defendants/Third Party Plaintiffs in connection with the site are not "response costs", recoverable from the Township of Maplewood, within the meaning of section 101 (23), (24) and (25) o CERCLA, 42 U.S.C. §101 (23), (24) and (25), as applied to the Spill Act.

TWENTIETH SEPARATE DEFENSE

Certain of the actions taken to date by Plaintiffs and/or Third Party Plaintiffs for which Third Party Plaintiffs are making a claim against the Township of Maplewood were not consistent with the National Contingency Plan because, among other things the Township of Maplewood was not provided with notice or an opportunity to comment.

TWENTY FIRST SEPARATE DEFENSE

The Township of Maplewood exercised reasonable care under all the circumstances herein. Consequently, it is not liable to Plaintiffs or Defendants/Third Party Plaintiffs under the common law or any statutory theory of recovery averred herein.

TWENTY SECOND SEPARATE DEFENSE

Certain of the claims for relief herein are time barred by the express terms of the Spill Act.

TWENTY THIRD SEPARATE DEFENSE

The Township of Maplewood cannot be held liable under the Spill Act or Comprehensive Environmental Response, Compensation and Liability Act for adopting regulations and/or ordinances authorizing waste pick-up in its municipality.

TWENTY FOURTH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs' claims against the Township of Maplewood is barred, in whole or in part, by Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3) because any releases, or threats of releases of hazardous substances, including those allegedly attributable to the Township of Maplewood, an allegation the Township of Maplewood denies, were caused by the acts or omissions of third parties other than the Township of Maplewood's employees or agents, or other than one with whom the Township of Maplewood had a direct or indirect contractual relationship, and the Township of Maplewood exercised due care with respect to the alleged

hazardous substance is concerned, an allegation the Township of Maplewood denies, taking into consideration the characteristics thereof, in light of all the relevant facts and circumstances, and took precautions against foreseeable acts or omissions of any such third party and the consequences that could be foreseeable from such act or omissions.

TWENTY FIFTH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs have not paid more than their fair share of any damages, costs or other relief sought by the Plaintiffs, New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund, and are, therefore, not entitled to contribution from the Township of Maplewood.

TWENTY SIXTH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs' claims for indemnification are barred because any alleged liability of the Township of Maplewood, liability the Township of Maplewood denies, would be secondary, in direct, passive, precarious, constructive, technical and/or imputed, and the liability of all or some of the Defendants/Third Party Plaintiffs are direct, active and primary.

TWENTY SEVENTH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs are not entitled to recover attorneys' fees or costs, or fees of litigation.

TWENTY EIGHTH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs are not entitled to recover for any alleged unjust enrichment as there exists an adequate remedy at law to redress Defendants/Third Party Plaintiffs' claims.

TWENTY NINTH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs' claims are barred by the statutory defenses to liability provided by the Spill Compensation and Control Act ("Spill Act").

THIRTIETH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs' claims are barred to the extent they seek relief for conduct occurring, or damages incurred, before the effective date of the Spill Act.

THIRTY FIRST SEPARATE DEFENSE

Defendants/Third Party Plaintiffs' claims for indemnification and otherwise are barred to the extent they seek recovery for any punitive damages as such claims are barred by public policy and applicable laws.

THIRTY SECOND SEPARATE DEFENSE

To the extent that Defendants/Third Party Plaintiffs' claims against the Township of Maplewood are subject to contribution, or any reduction or offset from other parties, any damages recovered against the Township of Maplewood shall be reduced accordingly.

THIRTY THIRD SEPARATE DEFENSE

The Third Party Complaint "A" must be dismissed for failure to join necessary and indispensable parties.

THIRTY FOURTH SEPARATE DEFENSE

The Township of Maplewood reserves the right to assert additional defenses that may be uncovered during the course of this action.

CROSS CLAIMS AND COUNTERCLAIMS

Pursuant to the Case Management Order, and succeeding directives of the Court, Third Party Defendant, the Township of Maplewood, is deemed to have denied all cross claims and counterclaims and asserted all available cross claims and counterclaims for cost recovery, contribution and common law indemnity against all other parties. The Township of Maplewood reserves the right to assert affirmative claims.

JURY DEMAND

The Township of Maplewood hereby demands and trial by jury.

DESIGNATION OF TRIAL COUNSEL

In accordance with Rule 4:25-4, you are hereby notified that Roger J. Desiderio, Esq. is assigned to try this case.

CERTIFICATION PURSUANT TO R. 4:5-1

It is hereby certified in accordance with R. 4:5-1 that the specific matter in controversy is not, to my knowledge, the subject of any action pending in any Court, nor of any pending arbitration

proceeding. Other than the above referenced actions, there are no other actions or arbitration proceedings in existence or contemplated at this time; and I know of no other party who should be joined in this action. I hereby certify that these statements made by me are true and that I am aware that if any of these statements are wilfully false, I am subject to punishment.

BENDIT WEINSTOCK, P.A.

BY: 

ROGER J. DESIDERIO

DATED: September 24, 2009

FILING CERTIFICATION

I certify that the original and copy of the within Answer have been sent by messenger for filing to the Clerk of the Superior Court of New Jersey, Law Division, Essex County, at the Veterans Courthouse, 50 W. Market Street, Newark, New Jersey 07102, within the time provided by Case Management Order V, paragraph 9(c)(ii), dated April 16, 2009, and a copy of same has been served via regular mail this date to Defendants/Third Party Plaintiffs' attorneys as follows:

William L. Warren, Esq.
Drinker Biddle & Reath, LLP
105 College Road East, Suite 300
Princeton, New Jersey 08542-0627

Thomas E. Starnes, Esq.
Andrews Kurth, LLP
1350 I Street NW - Suite 1100
Washington, DC 20005

I further certify that a copy of the Answer has been forwarded for delivery on this date to the Honorable Sebastian P. Lombardi, J.S.C., Superior Court of New Jersey, Essex County Historic Courthouse, Chambers 109, 470 Martin Luther King, Jr. Blvd, Newark, New Jersey 07102.

I further certify that a copy the Answer has been posted to the electronic platform for service as provided for by Case Management Order V.

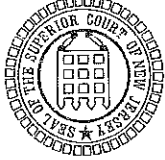

Dated:

9/24/09



ROGER J. DESIDERIO

Appendix XII-B1

 CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY
Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1 Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO.: AMOUNT: OVERPAYMENT: BATCH NUMBER:
ATTORNEY/PRO SE NAME Roger J. Desiderio, Esq.	TELEPHONE NUMBER (973) 736-9800	COUNTY OF VENUE Essex
FIRM NAME (If applicable) Bendit Weinstock, P.A.		DOCKET NUMBER (When available) ESX-L-9868-05
OFFICE ADDRESS 80 Main Street, Suite 260 West Orange, New Jersey 07052		DOCUMENT TYPE Answer
		JURY DEMAND <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
NAME OF PARTY (e.g., John Doe, Plaintiff) Township of Maplewood	CAPTION New Jersey Department of Environmental Protection, et al - v - Occidental Chemical Corp., et al and Occidental Chemical Corp., et al - v - Township of Maplewood, et al	
CASE TYPE NUMBER (See reverse side for listing) 156	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, LIST DOCKET NUMBERS	
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN	
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.		
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION		
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, IS THAT RELATIONSHIP <input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS	
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:		
<div style="display: flex; justify-content: space-between;"> <div>  DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO </div> <div>IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:</div> </div>		
<div style="display: flex; justify-content: space-between;"> <div>WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</div> <div>IF YES, FOR WHAT LANGUAGE:</div> </div>		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).		
ATTORNEY SIGNATURE:		